IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 108 OF 2006

1. Shri Nicolau Antonio Morais,
   son of late Pedro Morais, aged
   58 years, agriculturist, and his wife;

2. Smt. Penilla Morais,
   aged 48 years;

3. Shri Nazareth Morais,
   son of late Pedro Morais, aged
   60 years, service and his wife;

4. Smt. Mary Morais,
   aged 52 years;

   All residing at Hodar Village,
   House No. 64, P.O. Curchorem, Goa. .... Appellants

Versus

1. Gona Shankar Naik, son and his wife;

1(a). Smt. Sughonti G. Naik,
   major of age;

   Both residing at Soares Apartment,
   Tisk, P.O. Ponda, Goa.

2. Shri Vidhyadhar Shankar Naik,
   son of late Shankar Gunaji Naik,
   major of age, and his wife;

3. Smt. Vishanti V. Naik,
   major of age,
   Both residing at Cariamoddi,

Opp. Central Bank, Cacora,
P.O. Curchorem, Goa.

4. Shri Sanjeev Shankar Naik,
son of late Shankar Gunaji Naik,
major of age, and his wife;

5. Smt. Sonchya S. Naik,
major of age,
Both residing at Anandwadi,
Sanvordem, House No. 227,
P.O. Curchorem, Goa.

6. Smt. Kunda Narendra Naik,
major of age, daughter of late
Shankar Gunaji Naik, residing
at Valori, Assolna Taluka,
P.O. Assolna, Goa.

7. Smt. Sarita Arvinda Morajkar,
major of age, grand-daughter
of late Shankar Gunaji Naik,
and her husband

8. Shri Arvind Morajkar,
major of age,
Both residing at Tolaulim
Waddi, P.O. Ponda, Goa.

9. Shri Ramdas Gajanan Kakodkar,
son of late Simonthini Kakodkar,
major of age, and his wife

10. Smt. Shubhangui Ramdas Kakodkar,
major of age,
Both residing at House No. 87,
Nalanda Co-op. Society, Rawanfond,
Margao-Goa.

11.Shri Vijaykant Gajanan Kakodkar
son of late Simonthini Kakodkar,
major of age, and his wife

12.Smt. Vijayata Vijayakant Kakodkar
major of age

13.Shri Amar Kakodkar,
son of late Simonthini Kakodkar,
major of age, and his wife

14.Smt. Nalini Amar Kakodkar
major of age

15.Shri Shailendra Kakodkar,
son of late Simonthini Kakodkar,
major of age, and his wife

16.Smt. Nisha Shailendra Kakodkar,
all residents of House No. 193,
Patta Ribandar, Tiswadi, Goa.

17.Shri Kamalkar Gajanan Kakodkar
aged 73 years, agriculturist, and his wife

18.Smt. Urmina Kamalkar Gajanan Kakodkar,
major of age, agriculturist
Both residing at Near Betal Temple,
Cacora, Curchorem, Goa.

19.Smt. Annie Lopes,
major of age, housewife,
residing at H. No. A/214,
V.J.M. Nagar, Dr. Moses Road,
Mumbai 400 019.

20.Smt. Seelvia Gorgina D'Costa,
C/o Sonia Building Bag,
Sanvordem, Tisk, P.O. Curchorem, Goa.

21.Smt. Lali Vishram Porgant,
housewife, resident of H. No. R/190,
Anandwadi, Sanvordem,
P.O. Curchorem, Goa. .... Respondents

Shri C.A. Ferreira, Advocate for the Appellants.

Shri Sudesh Usgaonkar, Advocate for Respondents No. 1(a), 2 & 21.
Shri R.V. Kamat, Advocate for Respondents No. 9 to 18.

CORAM : **P.V. KAKDE, J.**

DATE : **13th NOVEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties. Perused the record.

2. This is an appeal preferred by the unsuccessful plaintiffs against the judgment and order passed by the Adhoc Additional District Judge, South Goa, Margao dismissing the appeal and confirming the judgment and order passed by the trial Court dismissing the plaintiffs' suit.

3. Plaintiffs came with the case that they were exclusive owners of property bearing survey no. 10/1 and 17/0 of Village Xeldem and were also in exclusive possession thereof. It was also alleged that the name of

defendants was recorded in the Records of Rights and as such suit came to be filed for declaration and perpetual injunction of the defendant. It was strongly challenged by the defendant, inter alia, denying the allegations of the plaintiffs submitting that those were false and property belonged to the plaintiffs themselves. Learned trial Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiffs failed to prove their case and dismissed the suit. Appeal came to be preferred before the District Court. The learned Additional District Judge after hearing both the parties concurred with the findings recorded by the trial Court and dismissed the appeal.

Hence, the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The only question which was involved in the entire dispute was whether the plaintiffs were in lawful possession of the suit property and the concurrent findings recorded were to the effect that plaintiffs failed to do so. There is no other question raised which would require our notice as contemplated under section 100 of the Civil Procedure Code. The Courts below are seen to have appreciated evidence in proper perspective and have concluded that the plaintiffs had

no case and had dismissed the matter. I do not see any reason to interfere with the findings recorded by the Courts below and as such appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

NH